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April 5, 1994

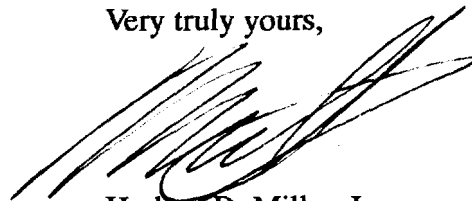
William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, N. W.
Washington, D. C. 20554

Dear Mr. Caton:

Transmitted herewith, on behalf of Telephone and Data Systems, Inc. and United States Cellular Corporation, is their Opposition to the Motion of Townes Telecommunications, Inc. for Leave to File Reply in CC Docket No. 94-11.

In the event there are any questions concerning this matter, please communicate with this office.

Very truly yours,



Herbert D. Miller, Jr.

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

IN RE APPLICATION OF

TELEPHONE AND DATA SYSTEMS, INC.

For facilities in the Domestic Public
Cellular Telecommunications Service
on Frequency Block B in Market 715,
Wisconsin 8 (Vernon) Rural Service
Area

CC Docket Number
94-11

TO: Honorable Joseph P. Gonzalez
Administrative Law Judge

OPPOSITION TO MOTION FOR LEAVE TO FILE REPLY

Telephone and Data Systems, Inc. (TDS) and United States Cellular Corporation (USCC) file herewith, by their attorneys, their Opposition to the motion of Townes Telecommunications Inc. (TTI) for leave to file a reply to their Opposition, and to the Common Carrier Bureau's comments opposing, TTI's motion for leave to intervene in this proceeding.

By its present motion, TTI seeks to supplement its motion for leave to intervene. As shown below, TTI has advanced no valid basis for the requested waiver of Section 1.294(b) of the Rules. Accordingly, its motion should be denied and its accompanying reply should be rejected.

The principal claim advanced in TTI's reply that was not previously argued is that it has intervention rights because it is a minority partner in a cellular system in Texas, the Commission consent to assignment of which is conditioned on the outcome of the subsequent proceedings mentioned in footnote 3 to the Commission's decision in *La Star Cellular Telephone Company*, 7 FCC Rcd 3762, *vacated and remanded sub nom Telephone and Data Systems, Inc. et al v. FCC*, case number 92-1291, slip opinion issued March 29, 1994. But that condition was imposed on August

24, 1993, long before TTI filed its petition to intervene. TTI has no valid excuse for failing to include that fact, if it really thought it was important, in its original petition to intervene.

In any case, TTI's status as a minority partner in a system in Texas, conditioned or not, entails no Section 1.223(a) or 1.223(b) right to intervene in this proceeding, which involves an application for a cellular system in Wisconsin. The *Hearing Designation Order (HDO)* does not contemplate action by the Presiding Administrative Law Judge on any authorization other than the authorization for Wisconsin 8. In the event that the Commission determines that any findings by the Presiding Administrative Law Judge concerning TDS' candor made in the instant proceeding affect its right to own or participate in ownership in the licensees in other markets, that issue must be addressed in separate proceedings.

The Commission spoke to the intervention rights of minority partners in *La Star Cellular Telephone Company*, 68 RR 2d 1500 (1991). There, USCC -- a 49 percent minority partner in La Star Cellular Telephone Company -- had sought to intervene. The Presiding Administrative Law Judge denied intervention, finding that USCC, as a minority partner in La Star, could not intervene absent a showing that it had a divergent financial or economic interest from La Star, indicating that La Star would not adequately represent USCC's interest, 68 RR 2d at 1501. The Commission agreed with this assessment, but nevertheless allowed USCC to intervene for the following reasons:

"[W]e recognize that USCC and its parent, TDS, hold numerous other Commission licenses. Therefore, we agree that any Commission determination that USCC or its parent, TDS, controls La Star may be raised in other, subsequent proceedings. While the interests of Star and SJI are the same in this proceeding, without participation by USCC here, USCC or TDS would have the right to litigate any such adverse finding in such a subsequent proceeding. Although the ALJ was correct that USCC did not show how its participation would assist the Commission in the resolution of this proceeding, in order to avoid further litigation on this issue in future proceedings, it would better serve the public interest to resolve the issue of control of La Star in this proceeding with USCC as a party. . . . In this regard, we

find that USCC's participation will assist the Commission." (68 RR 2d at 1501).

TDS was allowed to intervene in the *La Star* proceeding only as to the control issue; despite its economic interest in La Star's success or failure on the other matters at issue there, TDS was not allowed to participate with respect to them. No issue in this proceeding implicates the conduct of TTI or any TTI subsidiary, and the impact, if any, of this proceeding on the Texas cellular system in which TTI is a minority partner is not even at issue here. TTI has not even claimed, much less shown, that its minority interest in the Texas system gives it a divergent financial or economic interest from TDS in this proceeding, or that any legitimate interest it may have here will not be protected adequately by TDS. Since vindication of TDS in this proceeding would vitiate the effect of any condition on the Texas license, and since TDS has every desire and intention of securing vindication in this proceeding, the TTI interest insofar as it relates to the conditioned license is clearly the same as TDS' interest. TDS certainly has adequate incentives to defend its licensee qualifications here, and intends to do so vigorously. It has no desire for TTI's unsolicited assistance.

Nor has TTI shown any way in which its participation is likely to assist in resolution of the issues designated in this proceeding. The best it has been able to come up with is that

"[O]ne defensive strategy would be to argue that a certain business practices [sic] occurred in the New Orleans market and that those business practices are standard ones utilized in other markets." (TTI Reply, p. 3).

But the only substantive issue in this proceeding involves candor during the *La Star* hearing; business practices in New Orleans, Texas, or elsewhere, have nothing to do with that issue.

TTI also argues that "if leave to intervene is not granted to TTI, the Commission may not have all relevant information available to it." That is a *non sequitur*. If TTI had relevant information, its non-party status would not deprive the

Commission of that information. Its principals could be called to appear as witnesses by TDS, by the Bureau, or by any other party. Their attendance and testimony could be compelled by *subpoena* if necessary. However, since TTI has no connection with the *La Star* case, it is obvious that it possesses no relevant information that would help resolve the existing issues in this proceeding.

Finally, TTI argues that its intervention should be permitted because it would do no harm (TTI Reply, n. 3). That is not the test and, in TDS' view, also is not the case here. As noted in TTI's original intervention motion, TTI is suing TDS in Texas. In TDS' view, TTI's motivation for attempting to intervene is to fish in troubled waters here for whatever benefits may thereby accrue to its Texas civil litigation. TTI's attempts to manipulate this proceeding to assist it in its Texas litigation **would** harm the integrity of this proceeding. Since there is no affirmative reason to allow it to intervene, and the possibility of harm by allowing it to do so, TTI should not be allowed to intervene.

As the Presiding Administrative Law Judge held in denying an intervention petition filed by Henry M. Zachs, d/b/a Massachusetts-Connecticut Mobile Telephone Co. on April 4, 1994,

"Petitioner has not demonstrated that it falls within that group of parties specifically invited by the Commission in its Hearing Designation Order (FCC 94-29) released on February 1, 1994, to intervene in this proceeding. Specifically, there has been no showing that Mass-Conn has ever raised a character issue against either TDS or USCC. In addition, Mass-Conn has not shown that it has a legitimate economic or other interest in this proceeding; its minority interest in Evansville, Indiana cellular licensee is not relevant to this proceeding. Furthermore, Mass-Conn has not shown how its participation in this hearing would aid the Commission in resolving this matter. Accordingly, Petitioner's request for leave to intervene will be denied." (FCC 94M-215, released April 4, 1994).

TTI has demonstrated no more basis for intervention than did Mass-Conn.

TTI has shown no reason why it should be allowed to file an unauthorized reply pleading. Nor has TTI shown in its unauthorized reply pleading any reason

why it should be permitted to intervene here. Its motion for leave to file should be denied, as should its motion for leave to intervene.

Respectfully submitted,
TELEPHONE AND DATA SYSTEMS, INC.
UNITED STATES CELLULAR CORPORATION

By /s/ Alan Y. Naftalin
Alan Y. Naftalin

By /s/ Herbert D. Miller, Jr.
Herbert D. Miller, Jr.

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April 5, 1994

Certificate of Service

I, Richard Massie, a secretary in the law firm of Koteen & Naftalin, hereby certify that I have this date sent copies of the foregoing to the following by First Class United States Mail, postage prepaid:

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* By hand

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April 5, 1994